

**Minutes of the Meeting of the  
County of Clinton Industrial Development Agency  
February 8, 2016**

The meeting was called to order by T. Trahan, Chairperson, at 12:02 p.m., at the offices of the County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, N.Y.

Members Present:               Trent Trahan, Chairperson  
                                      David Hoover, Vice Chairperson  
                                      Keith Defayette, Treasurer and CFO  
                                      Michael Zurlo, Secretary  
                                      Kim Murray, Assistant Secretary  
                                      Mark Leta, Member  
                                      John VanNatten, Member

Excused:                         None

Others Present:                Roseanne Murphy, Executive Director  
                                      George Cregg, Esq., Agency Counsel  
                                      Barbara Shute, Recording Secretary  
                                      Rob Garrity, Borrego Solar

T. Trahan declared that a *quorum* was present.

T. Trahan waived the reading of the notice of the meeting published in the *Press-Republican* on December 11, 2015.

T. Trahan welcomed Rob Garrity to the meeting.

Presentation: Rob Garrity – Borrego Solar

Project Overview:

This project will be a 2.8MWdc / 2.0MWac system

- This farm being proposed for Champlain, is part of a larger regional project with two additional locations in Hoosick Falls, NY one farm generating 2.2MW, the other .8MW
- It will be providing solar energy to ORDA's Whiteface facility for 25 years to meet their budget and carbon goals;
- It will be creating half of one job;
- The total project cost is \$6 million and appears to have capital costs of between \$2-3 million;

- The Town and School District are still in the 487 program which exempts real property taxes on projects of this type, any IDA real property benefits would impact the County property tax;
- Estimate Project Costs:
  - NYSEG upgrades: \$.25MM
  - Labor costs: \$2.5MM
    - Civil site improvement
    - Module installation
    - Racking installation
    - Electrical installation
    - Commissioning
  - Legal, permitting, engineering: \$.5MM
  - Equipment costs: \$2.75MM
    - Modules
    - Inverters
    - Racking / mounting
    - Fencing
    - Electrical cabling & conductors, conduit, transformers
- Developer's concerns: Given Clinton County's Sales Tax rate is 4% (Clinton County has opted out of the statewide commercial solar equipment sales tax exemption) this project carries \$110k in sales tax. This is such a small amount in a large \$6MM project cost bucket, but given the cost of electricity in this NYSEG region, this project is challenged, economically. This is why projects of this scale are not common in this area.

The consensus of the request for the project is they are not seeking a reduction in in the amount of taxes that they owe, they are looking for a fixed schedule payment amount.

The project could potentially seek a sales tax exemption on their durable goods purchases.

Reading and Consideration of the Draft Minutes of the CCIDA meeting of December 14, 2015:

T. Trahan waived the reading of the minutes of the January 20, 2016 regular meeting. He asked if there were any questions or discussion regarding the draft minutes, there were none. On a motion by M. Zurlo and seconded by J. VanNatten, it was unanimously carried to approve the minutes of the January 20, 2016 regular meeting, as presented.

Treasurer's Report

**CCIDA:**

The account balance at 1/31/2016 was \$142,853.88

No Income reported for January:

**Balance Sheet:**

There is \$0 remaining in the CIDA, LLC's bank account.

**Income Statement:**

The income statement shows the expenses that were approved during the month of January.

The "net income or loss" for each month will be for expenses for administering the CCIDA.

Expenses paid in January:

TDC- Admin fee	\$7,216.25
Jennetix (website posting)	\$ 297.50
Total Expenses	\$7,513.75

On a motion by M. Zurlo and seconded by D. Hoover, it was unanimously carried to approve the treasurer's report as presented by K. Defayette.

Reports of the Committees:

**Audit Committee:**

K. Defayette stated that the committee met briefly to vote on a recommendation to migrate the Agencies websites to a new platform that can be maintained in house.

R. Murphy was able to secure a second bid to comply with the Agency's Procurement Policy. The committee would like to make the recommendation to move forward with the website migration with Build Up Technologies at a cost of \$1,600 and \$120 for a monthly maintenance fee.

On a motion by M. Leta and seconded by J. VanNatten, it was unanimously carried to accept and approve the audit committee's recommendation to move forward with the migration of the Agency's websites using Build Up Technologies as presented.

**Governance Committee:**

M. Zurlo noted that the committee met to discuss a new fee policy for projects whose ultimate ownership will be with the CCIDA.

After some discussion the consensus of the members was to seek additional information from Agency Counsel before moving forward. In theory the members like the idea and all agreed to move forward.

The second item that the committee discussed was potential changes to the Agency UTEP policy regarding alternative energy projects. M. Zurlo explained that the Agency granted a PILOT deviation to the Noble and Marble River projects. With the potential for new alternative energy projects coming to the Agency it is important to ensure that they receive similar benefits.

The committee can see the merit of amending the UTEP as discussed and will be reviewing information from G. Cregg and then they will prepare a recommendation to the full Board regarding those changes.

#### Project Monitoring:

R. Murphy reviewed the report of her 2015 outreach which included jobs information from the 2014 audit letters, and her assessment as to the IDA goals for each project. She explained that she tried to look at each project and determine the goals from project descriptions or from other materials in Agency files. She also attempted to expand the goals for each project to include not only jobs but also factors that logically support a development agency's support for financing and assistance.

Following are the criteria used as IDA Project Goals.

- Did the jobs cited in the 2014 audit letter or 2015 visit meet or exceed job goals from the application:
- Did the project achieve any of the following economic development or community goals:
  - Create new jobs
  - Support economic growth
  - Diversify the economy
  - Attract new investment
  - Support or attract cross border trade
  - Strengthen or grow a County economic sector
  - Support community growth
  - Support community safety (and health)

R. Murphy stated that there are still four companies that she has yet to make contact with and they will be the first four to be contacted in 2016.

R. Murphy reviewed each of the projects.

There were concerns noted about several projects not meeting the projected jobs from their application. However, it was also noted that there are mitigating circumstances for each project that need to be taken into consideration.

G. Cregg stated that the new State law will assist with this argument noting that an approving resolution will need to be passed that includes the specific reasons why a project is being approved for benefits.

He further suggested that the rationale for the approval be included in the resolution. The Agency will need to adopt a policy for the criteria for approval and that language will need to be included in the Recapture Policy. The criteria will need to include how the Agency will determine if a project is succeeding at meeting its projected goals and, if not, the Agency will need to determine why those goals are not being met.

G. Cregg also noted that the State wants to know that the Agency is monitoring specific items when making site visits.

- The site visit must include an Agency review of the company's forms that they are submitting to the State to ensure accuracy of reporting.
- The Agency must also verify that the PILOT payments are being computed properly and the payments are being made.

R. Murphy stated that C. Jabaut is currently working with the County Treasurers office to ensure this is being done and this will be incorporated in the 2016 report.

- The Agency must also verify that the company has not or is not taking any further sales tax exemptions once the St-60 form has expired.

G. Cregg made a suggestion for staff to prepare a report with a recommendation for action to be reviewed by the Board. Once approved the report will be entered into the minutes for the purpose of any future audits.

#### Old Business:

##### Borrego Solar

R. Murphy noted that the Borrego Solar project is considered a borderline project. The benefit does not come into Clinton County however; the project will provide support to the area from an economic perspective. M. Zurlo commented that the project will provide guaranteed revenue for Clinton County.

After a short discussion the consensus of the members was to invite Borrego Solar to submit an application for consideration with no promise of benefits.

#### New Business:

1. Discussion of new IDA reform legislation and impacts on CCIDA:

This was discussed earlier in the meeting.

2. Consideration of moving the IDA March meeting from March 11<sup>th</sup> to March 28<sup>th</sup>

R. Murphy noted that the members will need to review and approve the audit prior to it being posted on the ABO website. The audit is usually completed by the third week of March. There are two options, have the regular meeting on March 11<sup>th</sup> and then hold a

special meeting to review the audit on March 28<sup>th</sup> or move the regular meeting to March 28<sup>th</sup>. The consensus of the members is to move the regular meeting to March 28<sup>th</sup>.

3. Discussion on proposed change in Governor's 2016-17 Budget to require IDA projects financed by tax-exempt private activity bonds to be approved by the state Public Authority Control Board (PACB).

G. Cregg noted that Governor Cuomo's budget contains a proposal to require IDA projects financed by tax exempt bonds to be approved by the state Public Authorities Control Board (PACB). He commented that the CCIDA has not utilized these benefits within the last ten years and this ruling would have very little impact on the CCIDA. The consensus of the group is to take no action at this time.

4. Consideration of sale of TDC Bldg. #16 to APG Neuros IDA Lease Termination Agreement

R. Murphy noted that the current tenant of Building #16 has notified TDC of their intent to exercise their option to purchase the building which is currently an IDA project. The IDA will need to authorize a termination on the lease and the project.

The company would have the option to assume the balance of the term of the PILOT or not. If the company does not assume the balance of the term the PILOT would end and the property would go back to the full tax roll. At this time staff is seeking authorization to proceed with which ever option is requested by TDC.

The following resolution was offered by D. Hoover, seconded by K. Murray, to wit:

Resolution No. 02-16-01

RESOLUTION AUTHORIZING (A) RECONVEYANCE OR (B) ASSIGNMENT AND ASSUMPTION OF CERTAIN DOCUMENTS AND AUTHORIZING THE EXECUTION AND DELIVERY BY COUNTY OF CLINTON INDUSTRIAL DEVELOPMENT AGENCY OF SAME IN CONNECTION WITH THE DEVELOPMENT CORPORATION CLINTON COUNTY, NEW YORK PROJECT.

WHEREAS, County of Clinton Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 225 of the 1971 Laws of New York, as amended, constituting Section 895-f of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing, and warehousing facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about July 20, 2006 (the "Closing Date"), the Agency undertook the following project (the "Project") for the benefit of The Development Corporation Clinton County, New York (the "Company") consisting of the following:

(A) the acquisition of an interest in an approximately 5.4 acre parcel of land located on Banker Road, near the intersection of Tom Miller Road (known as The Development Corporation Building #16) in the Banker Road Industrial Park in the Town of Plattsburgh, Clinton County, New York (the "Land"), (2) the construction of an approximately 60,000 square foot building on the Land (the "Facility") and (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment"), all of the foregoing to constitute a distribution facility to be leased by the Company to Mission Itech Hockey, Inc. (the "Tenant") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of July 1, 2006 (the "Lease Agreement") by and between the Agency and the Company; and

WHEREAS, in connection with the Closing, the Agency and County entered into (A) a lease agreement dated as of July 1, 2006 (the "Lease to Agency") by and between the Company, as landlord and the Agency, as tenant pursuant to which the Company leased to the Agency the Land and all improvements now or hereafter located on the land (collectively, the "Premises") for a lease term ending on December 31, 2017, and (2) a bill of sale dated as of July 1, 2006 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of July 1, 2006 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency filed with the assessor and mailed to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, also simultaneously with the Closing and in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of up to \$3,317,000 (the "Loan") from Glens Falls National Bank and Trust Company (the "Lender"), which Loan was secured by (1) a mortgage dated as of July 1, 2006 (the "Mortgage") from the Agency and the Company to the Lender, (2) an assignment of leases and rents dated as of July 1, 2006 (the "Assignment of Rents") from the Agency and the Company to the Lender and (3) a security

agreement dated as of July 1, 2006 (the "Security Agreement") from the Agency and the Company to the Lender (the Mortgage, the Assignment of Rents and the Security Agreement being collectively referred to as the "Mortgage Documents"); and

WHEREAS, by various correspondences, attached hereto as Exhibit A, the Agency was requested (A) to terminate and reconvey to the Company, the Project Facility, pursuant to certain reconveyance and/or termination documents (collectively, the "Reconveyance Documents") or

(B) (1) to approve the assignment to, and assumption by, APG Neuros Corp., a business corporation organized and existing under the laws of the State of Delaware, currently the tenant of the Project Facility (the "New Company"), of all of the Company's interest in the Project Facility and the Basic Documents, including but not limited to the benefits of the Lease Agreement and the Payment in Lieu of Tax Agreement and (2) to authorize the assumption by the New Company of all obligations of the Company under the Basic Documents and the Payment in Lieu of Tax Agreement pursuant to an assignment and assumption agreement (the "Assignment and Assumption Agreement") (the foregoing being collectively referred to as the "Assignment"); and

WHEREAS, in connection with the Reconveyance or the Assignment, (A) the Mortgage Documents will be discharged, as the Loan will be paid off or (B) the New Company will either take an assignment of the Mortgage Documents or obtain new financing and would like the Agency to enter into either (1) an assignment of the Mortgage Documents or (2) one or more mortgages and any other security documents and related documents (collectively, the "New Mortgage Documents") from the Agency and the New Company to the New Company's lenders with respect to the Project; and

WHEREAS, pursuant to Section 9.3 of the Lease Agreement, the Company is prohibited from assigning the Lease Agreement or selling, leasing, transferring or otherwise conveying any part of the Project Facility without the prior written consent of the Agency and the Lender, if necessary; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Reconveyance or the Assignment; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Reconveyance and the Assignment in order to make a determination as to whether the Reconveyance or the Assignment is subject to SEQRA, and it appears that the Reconveyance or the Assignment constitutes a Type II action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF COUNTY OF CLINTON INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon an examination of the Reconveyance, the Agency hereby determines that the Reconveyance constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(26), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Reconveyance.



Section 2. Based upon an examination of the Assignment, the Agency hereby makes the following determinations:

(A) The Assignment constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c)(23) and (26), and therefor that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Assignment.

(B) That since compliance by the Agency with the Assignment will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the New Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Assignment.

Section 3. Subject to (A) approval of the form of the Reconveyance Documents by Agency counsel, (B) evidence satisfactory to the Agency that (i) all payments in lieu of taxes and other local fees and assessments relating to the Project Facility have been paid by the Agency and (ii) evidence that the Agency has been removed as a party to the Basic Documents and any other security documents and (C) receipt by the Chairman of the Agency’s administrative fee, if any, and counsel fees relating to the Reconveyance, the Agency hereby authorizes the execution by the Agency of the Reconveyance Documents.

Section 4. The Agency hereby approves (A) the assignment to, and assumption by, the New Company of all of the Company’s interest in the Project Facility, the Basic Documents, and the Mortgage Documents, including but not limited to the benefits of the Lease Agreement and the Payment in Lieu of Tax Agreement, (B) the assumption by the New Company of all obligations of the Company under the Basic Documents and the Mortgage Documents pursuant to the Assignment and Assumption and (C) the execution and delivery by the Agency of an affidavit of exemption from mortgage recording taxes with respect to the Assignment; subject in each case, however to the following conditions: (1) receipt of confirmation that all real property taxes and payments in lieu of taxes required by the Project have been satisfied; (2) receipt of confirmation from Agency counsel that no modifications shall result from the Assignment that result in any new tax relief for the Project (such as an extension of the term, increase in abatement or change in the Payment in Lieu of Tax Agreement); (3) consent of the Lender to the Assignment and Assumption, if necessary or evidence that the Loan has been paid in full and that the Mortgage has been discharged; (4) approval by counsel to the Agency of the form of the documents to be executed by the Agency in connection with the Assignment and Assumption, including the Assignment and Assumption Agreement and an assignment of the Mortgage Documents or the New Mortgage Documents and a mortgage recording tax affidavit (collectively, the “Assignment Documents”); and (5) receipt by the Agency of its administrative fee relating to the Assignment and all fees and expenses incurred by the Agency with respect to the Assignment, including the fees and expenses incurred by Agency counsel and special counsel with respect thereto.

Section 5. Subject to the satisfaction of the conditions described in Section 4 hereof, including the condition that no modifications provide any new tax relief for the Project (such as an extension of the term, increase in abatement or change in the Payment in Lieu of Tax Agreement), the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver

(A) the Reconveyance Documents to the Company or (B) the Assignment Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the

Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Reconveyance Documents or the Assignment Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of this Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Reconveyance Documents or the Assignment Documents binding upon the Agency.

Section 6. The law firm of Hodgson Russ LLP is hereby appointed Agency Counsel to the Agency with respect to all matters in connection with the Reconveyance or the Assignment. Agency Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, and counsel to the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 7. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Trent Trahan	VOTING	YES
David Hoover	VOTING	YES
Michael E. Zurlo	VOTING	YES
Keith Defayette	VOTING	YES
Kim Murray	VOTING	YES
Mark Leta	VOTING	YES
John VanNatten	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

#### Executive Director's Report

R. Murphy noted that she nothing further to report at this time.

The meeting was adjourned at 1:45pm.

  
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Dave Hoover, Vice Chairperson